

### **REMARKS**

The following issues are outstanding in the pending application:

- Claims 8, 11 and 15-18 are rejected under 35 U.S.C. § 112, first paragraph.

#### **35 U.S.C. § 112**

Claims 8, 11 and 15-18 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Applicants respectfully traverse.

Applicant is submitting with this response a Declaration that states that a deposit of the organism, recited in the claims of the above referenced application, was been made under the Budapest Treaty on October 2, 2001. Further, that the probiotic microorganism, *Lactobacillus* having accession number NCIMB 41117, without restriction or condition, will be irrevocably released to the public upon issuance of a patent from the above referenced application. Thus, Applicant submits that the deposit requirement has now been made. Therefore, in view of the attached Declaration, Applicant respectfully requests that the rejection of claims 8, 11 and 15-18 under 35 U.S.C. § 112, first paragraph be withdrawn.

### **CONCLUSION**

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03101US0 from which the undersigned is authorized to draw.

Dated: December 13, 2007

Respectfully submitted,

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Application No. 10/517,268  
Amendment dated December 13, 2007  
Reply to Office Action of November 1, 2007

Docket No.: HO-P03101US0

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